

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
AHSEVILLE DIVISION  
CRIMINAL DOCKET NO.: 1:08CR55-V**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
<b>vs.</b>	)	<b><u>ORDER</u></b>
	)	
<b>EDWARD WAHLER,</b>	)	
<b>Defendant.</b>	)	
<hr style="width:40%; margin-left:0"/>	)	

**THIS MATTER** is before the Court upon motions filed by Stand-by Counsel, William R. Terpening: 1) Motion To Reconsider or, in the Alternative, To Withdraw as Stand-by Counsel, filed August 14, 2008 (Document #37); 2) Motion Regarding Unavailability, filed September 12, 2008 (Document #51); and 3) Supplement to Motion To Reconsider and Motion Regarding Unavailability, filed September 25, 2008 (Document #52).<sup>1</sup>

Mr. Terpening was allowed to withdraw as attorney of record on July 21, 2008, and designated as Stand-by Counsel. Suggesting that this role is entirely consistent with said appointment by the magistrate judge, Mr. Terpening represents to the Court that he is only available and / or willing to serve in this capacity “if and only if” Defendant Wahler makes such a request.<sup>2</sup> (Motion to Reconsider, ¶5)

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<sup>1</sup> To date, Defendant Wahler has not filed a written response to either of Mr. Terpening’s first two motions and the time for responding has expired.

<sup>2</sup> However, in addition to any specific request of the Defendant, there may be occasion for Stand-by Counsel to act as a liaison between Defendant Wahler and the Court, or vice versa. There may also be a need for Stand-by Counsel to provide Defendant Wahler with research on various topics at the direction of the Court. In any event, because the undersigned did not preside over the Inquiry as to Status of Counsel hearing, the Court will not attempt further to describe what the nature of Stand-by Counsel’s role may be in such a case, nor will the Court relieve Mr. Terpening of this duty at this time.

Counsel asks the undersigned to vacate its August 11, 2008 Order in part, namely, to eliminate the requirement that Stand-by counsel screen Defendant's proposed *pro se* filings.<sup>3</sup> According to counsel, "Mr. Wahler will not communicate with [him]" and "has terminated communications with" Mr. Terpening. (Motion to Reconsider, ¶¶6, 8) Counsel is also concerned that if he is required to screen Defendant's proposed *pro se* filings, he will be effectively restored to acting "in a representative capacity" against Defendant's express wishes to the contrary. (Motion to Reconsider, ¶7) For these reasons, the Court will amend its August 11, 2008 Order as requested.

**IT IS, THEREFORE, ORDERED THAT:**

- 1) Stand-by Counsel's Motion To Reconsider is hereby **GRANTED**. Accordingly, Mr. Terpening will not be required to screen and discuss Defendant's proposed *pro se* filings as directed in the Court's August 11, 2008 Order;
- 2) The Deputy Clerk may "file" rather than "receive" any submission of Defendant Wahler in light of the amendment to the August 11, 2008 Order, namely, that the "screening" requirement is no longer in effect;
- 3) Stand-by Counsel's Motion Regarding Unavailability is **GRANTED**. Accordingly, Mr. Terpening will not have to appear at the hearing currently scheduled for Monday, October 6, 2008 at 10:30 a.m. in the Statesville Division;
- 4) To the extent Stand-by Counsel requests withdrawal altogether, that motion is **DENIED**. Mr. Terpening will remain Stand-by Counsel and will continue to be available should his assistance be requested; and

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<sup>3</sup> The pertinent portions of the August 11, 2008 Order read as follows:

- 2) Stand-by counsel shall screen Defendant's proposed *pro se* filings by discussing each proposed filing with the Defendant and certifying in writing that the same has occurred prior to actual filing;
- 3) Unless accompanied by a certification from stand-by counsel as described herein, the Clerk of Court may receive, but not file, proposed *pro se* filings submitted by Defendant.

5) The hearing scheduled for Monday, October 6, 2008 at 10:30 a.m. will proceed on the Government's Motion to Transfer, as well as any other outstanding issues.

Signed: October 1, 2008

A handwritten signature in black ink, reading "Richard L. Voorhees". The signature is written in a cursive style with a horizontal line underneath the name.

Richard L. Voorhees  
United States District Judge

